

**Before the
Federal Communication Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Developing a Unified Inter-carrier Compensation Regime)	CC Docket No. 01-92
)	DA 02-1740
Sprint Corp. Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic By ILECs)	

**Reply Comments Of:
Fred Williamson and Associates, Inc. ("FW&A")
And
Kansas Consolidated Professional Resources ("KCPR")
On behalf of:**

**Chouteau Telephone Company, an Oklahoma ILEC
Columbus Telephone Company, Inc., a Kansas ILEC
Elsie Communications, Inc., a Nebraska ILEC
Dalton Telephone Company, Inc., a Nebraska ILEC
Gorham Telephone Company, Inc., a Kansas ILEC
H&B Telephone Communications, Inc., a Kansas ILEC
LaHarpe Telephone Company, Inc., a Kansas ILEC
Madison Telephone, LLC, a Kansas ILEC
Moundridge Telephone Company, Inc., a Kansas ILEC
Peoples Communications, Inc., a Kansas ILEC
Pine Telephone Company, Inc., an Oklahoma ILEC
Pioneer Telephone Association, Inc., a Kansas ILEC
Southern Kansas Telephone Company, a Kansas ILEC
Totah Telephone Company, Inc., a Kansas and Oklahoma ILEC
Twin Valley Telephone, Inc., a Kansas ILEC
Wamego Telecommunications, Inc., a Kansas ILEC
Wheat State Telephone Company, Inc., a Kansas ILEC
(Collectively, "ILECs")**

August 19, 2002

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I **Background**

The ILECs are small rural Local Exchange Carriers (LECs) who have an interest in the outcome of this proceeding because (a) Commercial Mobile Radio Service (CMRS) providers and Competitive Local Exchange Carriers (CLECs) use the ILECs' network to terminate traffic and (b) Customers connected to the ILECs' network originate, via Interexchange Carriers (IXCs), traffic which is terminated by CMRS providers and CLECs in the ILEC local service areas. In the mobile to land direction, CMRS providers and CLECs now deliver traffic, indirectly via Southwestern Bell Telephone Company (SWBT) and/or Qwest or other regional Bell Operating Companies (RBOCs), to the ILECs for termination to customers connected to the ILEC networks. Until recently, when SWBT began providing terminating usage information by CMRS providers to the ILECs, the ILECs had no means of identifying the CMRS providers to bill them for the use of the ILECs' networks to terminate calls. At odds with the Act, CMRS providers delivered this traffic for termination without contacting the ILECs to establish interconnection agreements and without compensating the ILECs for termination. In the land to mobile direction, interexchange traffic originated by customers connected to the ILECs' networks that is destined for customers connected to the wireless carriers' networks, is handed off by the ILECs to IXCs under interstate and intrastate equal access rules. The IXCs deliver this traffic, under Commission rules to the CMRS providers for termination. The Sprint proposal would substantively disrupt this call processing (the jurisdictionalization of traffic), would misuse numbering administration and the Local Exchange Routing Guide (LERG), is at odds with Commission rules and the Act and

would, if adopted, simply provide another anticompetitive benefit to the Cellular providers and CLECs.

II **Summary of Comments**

The cellular carriers and others filing Comments in support of Sprint incorrectly and inaccurately assert that unless LECs are required to load numbers rated and routed at different points, the entire interconnection framework set out by the Act and the Commission's rules would be undermined. These assertions, misstatements and misquotes of Commission rules are wrong and do not support the position taken by Sprint that differing rating and routing points are appropriate for CMRS or any other providers.

The Commission should make it clear in this proceeding that differing rating and routing points or virtual NPA-NXX arrangements are inappropriate and constitute an uneconomic bypass of the toll network, are at odds with Commission Orders, are a misuse of the LERG, are anticompetitive and harm local exchange customers. As a consequence, the Commission should prohibit this arrangement.

This prohibition would not harm Sprint, other CMRS providers, CLECs or their customers. These companies would not have a competitive disadvantage and need not, as they allege, directly connect their facilities to the LEC's switch. They may continue to connect their facilities to the RBOC tandem that serves the ILEC and use common transport to reach customers in ILEC exchanges. They will however, be required to conform to appropriate LERG routing and rating to preserve jurisdictional classifications and the access charge regime, just as are all LECs and IXC's.

The Commission should deny differing rating and routing or virtual NXX arrangements for:

- Interexchange landline to mobile traffic that is interMTA (interstate or intrastate). These calls, under the Commission's rules and the Act are clearly (jurisdictionally) toll and cellular carriers have no basis to obtain toll free calling via differing rating and routing or virtual NXX arrangements.
- Interexchange landline to mobile traffic that is interLATA or interstate intraMTA. Again, these calls, under the Commission's rules and the Act are clearly (jurisdictionally) toll and cellular carriers have no basis to obtain toll free calling via differing rating and routing or virtual NXX arrangements.
- Interexchange landline to mobile traffic that is intraLATA intraMTA. Under the Commission's rules and the Act, this traffic must, on an equal access basis, be handed off to an IXC. It is not local, but is toll and therefore cellular carriers have no basis to obtain toll free calling via differing rating and routing or virtual NXX arrangements.
- Interexchange interstate or intrastate landline to CLEC traffic. The CLECs can point to nothing in the Commission's rules or the Act that gives them the right to avoid toll charges on IXC interexchange traffic that terminates to their customers. CLECs have no basis to obtain toll free incoming calling to their customers via differing rating and routing points or virtual NXX arrangements.

Finally, the arguments presented by Nextel to support bill-and-keep are wrong and are simply a self-serving attempt to increase its bottom line at the expense of ILECs and local exchange customers. Bill-and-keep for CMRS-ILEC interconnection is economically

inefficient, results in inappropriate, unwarranted and anticompetitive cross subsidies and should be rejected by the Commission.

III

The Assertions of the Commenters Supporting Sprint Are Simply Self-Serving Misstatements of Commission Rules and the Act, Designed to Disguise the Fact That They Are Proposing Toll Bypass, Misuse of Numbering Administration and the LERG, Jurisdictional Misclassification of Calls and An Attempt to Gain an Inefficient and Inappropriate Competitive Advantage Vis-à-Vis the LECs and IXC.

The commenters supporting Sprint misstate the Act and Commission rules to attempt to justify their position that differing rating and routing points (i.e. virtual NXX) are consistent with and required by the Act and Commission rules. These commenters allege that:

- Any refusal by a carrier to honor the rating and routing points designated by other carriers will substantially increase costs for all carriers and will increase the risk that calls will not be completed in the future.¹
- LECs are still using their monopolistic power over the local telephony market to force CMRS carriers into improper interconnection relationships.²
- If the Commission fails to clarify and to unambiguously reaffirm current rules on the rating and routing of intra-MTA calls, the impact on competing carriers and their customers could be disastrous.³

¹ Nextel, page 6.

² Small Business in Telecommunications, page 2.

³ Allied, page 3.

- The CMRS provider may be forced to construct facilities or purchase expensive and unnecessary facilities in order to complete calls.⁴
- Refusal to load CMRS carrier numbers would be one way for ILECs to require such carriers to pay for expensive and inefficient network configurations and to force other carriers to pay once again for the privilege of receiving ILEC originated traffic.⁵
- The Sprint petition highlights ILEC efforts to avoid interconnection.⁶
- The shifting of ILEC costs to CMRS and competitive carriers serves nothing more than to erect barriers to impede effective CMRS competition.⁷

These statements and others like them in the Comments of the commenters supporting the Sprint petition are at odds with the facts and are plainly wrong. ILECs are not attempting to avoid interconnection, are not attempting to shift costs to competing carriers, are not attempting to force improper interconnection relationships, are not causing competitive carriers to incur inefficient costs and are not erecting barriers to hinder effective competition. The Commission should, in fact, be wary when these types of allegations are put forth in comments of competitive carriers. These exact allegations have been used over and over by carriers who are in fact seeking an improper competitive advantage in the marketplace and have, when taken as fact by regulators, led to decisions that have forced inefficient and “managed” competition while substantially harming the ILECs and consumers. Perceiving competitors’ claims as fact, while assuming that ILECs are “erecting barriers to entry”, has led to regulatory decisions that have harmed the

⁴ Dobson, page 5.

⁵ Arch Wireless, page 2.

⁶ Arch Wireless, page 14.

⁷ Voicestream and Western Wireless, page 3.

LECs and LEC customers by allowing CLECs serving Internet Service Providers (ISPs) to game the system to improperly obtain terminating compensation for Internet traffic; driven toll and access rates to uneconomically low levels and ignored real and actual costs of LECs; and have created asymmetric rules favoring CLECs and CMRS providers to induce “competition”.⁸

In this proceeding, CMRS carriers and CLECs are again urging the Commission to implement policies that, even though they are at odds with the Act and Commission rules,

⁸ Billions of dollars have flowed to CLECs who had no intention to serve residential customers, but were simply allowed by regulators to game the system by serving only ISP's in order to improperly receive terminating compensation from the LECs. It is difficult to determine how this benefited consumers, and it clearly harmed the LECs. Many of the CLECs and ISPs, however, whom regulators apparently hoped, via the improper subsidies, would actually stay in the market and compete have either taken the money and run, or gone bankrupt.

Toll and access rates have been driven to uneconomically low levels through the mistaken notion that these actions would benefit consumers. Transport costs have been artificially lowered by removing real costs, the “transport interconnection charge”. Likewise, the costs of access and toll have been artificially lowered in the “economically efficient” effort to remove subsidies from access and toll rates, and to base these rates on forward looking costs. Real and actual costs of LECs have been ignored in this process, and because they were labeled “subsidies” have been, and continue to be recovered not from toll and access services, but from end user consumers. The result of these manipulations, urged on by LEC competitors through arguments similar to those used in this proceeding, has been inefficient competitive network entry, substantive construction of facilities and overcapacity due to regulatory decisions causing improper market signals, and ultimately the bankruptcies that are now occurring in the telecommunications industry. The effect in the end has harmed most consumers through higher rate levels and may harm LECs through non-payment of access services by bankrupt carriers such as Worldcom. Bankruptcies, in part caused by regulatory market manipulation, have contributed to the instability of equity markets and thus are harming the overall economy.

The actual cost of competitive entry for CLECs has been artificially manipulated and asymmetric rules favoring CLECs and CMRS providers in order to attempt to induce “managed” competition. For instance, CLECs are allowed to purchase Unbundled Network Elements (UNEs), whose rates are based on forward-looking costs that in no way recover the real cost of the LECs. Similarly, unequal and unfair Eligible Telecommunications Carrier rules which allow CLECs and CMRS providers to receive universal service funds based on LEC and not their own costs, avoid equal access and quality of service obligations and then charge whatever rate they wish to consumers, irrespective of whether that rate is just, reasonable and affordable, is a misuse of universal service funding, and will over time cause the funding required by LECs who really serve customers in rural areas to be unsustainable. Again, these policies, based on rhetoric such as CMRS providers and others have used in this proceeding, have been urged on by competitive carriers. The fruits of these policies are beginning to be clear. CLECs who were artificially incited into the market by regulatory mandated and artificially low entry costs and improperly applied universal service funding are beginning to exit the market through bankruptcies. LECs have been financially harmed because at the artificially low UNE prices, they are unable to recover their real costs of providing facilities. Universal service funding that should flow to offset high network costs of LECs in rural areas is instead being siphoned off by competitors who have no need for this support, and concerns are emerging that the funds may be unsustainable. Again, the losers, as a result of these mistaken regulatory policies are, or will be, rural consumers and the LECs who, as the carrier of last resort, serve these consumers.

will provide them with an artificial and inefficient competitive advantage. By denying the Sprint petition, the Commission, in this proceeding should take a step toward implementing policies that will be fair to all market participants, serve consumers well, and that will not inefficiently favor CMRS providers and CLECs.

IV

The Proposal in Sprint's Petition is an Attempt to Bypass, Through Virtual NXX Arrangements, Legitimate IXC Provided Toll in the Rural Areas Served by the ILECs

Sprint and their supporters are proposing that the Commission allow differing rating and routing points or virtual NXX arrangements that would result in:

- A local telephone number associated with a Sprint switch (rating point) that may be in Oklahoma, in another state in the United States, or for that matter in a foreign country, to be virtually assigned to an LEC local switch (routing point) in a different state or area.
- The LEC would be required to allow any end user dialing the virtual number to be routed via a third party carrier such as SWBT, Qwest, or BellSouth to the Sprint switch location where the number actually belongs, whether that is in Oklahoma, in another state, or in a foreign country, on a local-calling, toll free basis.

This is precisely the virtual NXX arrangement defined by the Commission – virtual codes are those that “correspond with a particular geographic area that are assigned to a customer located in a different geographic area.”⁹ The carriers supporting Sprint filed

⁹ CTIA, page 3.

Comments in this proceeding describing precisely this situation, while incorrectly and disingenuously claiming it was not virtual NXX calling.

As FW&A pointed out in its initial comments, allowing Sprint, or any other CMRS provider, CLEC or telecommunications carrier, to inappropriately assign numbers to an LEC switch and to incorrectly require calls to those numbers to be routed beyond the LEC's local calling area as local calls, will (a) Destroy the current jurisdictional (local, intrastate, interstate and international) traffic distinctions by inappropriately classifying intrastate toll, interstate toll and international traffic as local and will (b) Cause incorrect intercarrier compensation (local reciprocal compensation rather than interstate or intrastate access). Toll providers and IXC's are now carrying the vast majority of this traffic under the auspices of approved tariffs. Allowing Sprint, other CMRS providers and CLECs to arbitrarily change the jurisdictional nature of the traffic simply to expand the local calling scope of traffic destined for their end users, harms IXC's serving rural areas, is anti-competitive and not in the public interest. For these reasons alone, the Commission should deny Sprint's petition.

Sprint's petition and adopting a rule stating that differing rating and routing points or virtual NPA-NXX arrangements are appropriate, should be dismissed and denied because:

- Virtual NPA-NXX service requested by Sprint is simply a ruse to avoid legitimate retail tariffed charges for providing interexchange calling. In effect, it is uneconomic toll bypass, and is inappropriate.¹⁰

¹⁰ It is a clear example of uneconomic bypass to allow Sprint, as well as other CMRS providers and CLECs to implement a service that requires LECs to transport interexchange calls (as local calls) to any location designated by Sprint for free, (b) pay transiting access to all intermediate carriers that transport the calls and (c) pay reciprocal compensation to Sprint for the privilege of providing this free service. Cellular

- Allowing virtual NPA-NXX service would eliminate toll service provided by IXC's under the Commission's equal access provisions and is at odds with Commission's Orders:

“ As noted above, CMRS providers' license areas are established under Federal rules, and in many cases are larger than the local exchange service areas that state commissions have established for incumbent LECs' local service areas. We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges. Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC, with the exception of certain interstate interexchange service provided by CMRS carriers, such as some "roaming" traffic that transits incumbent LECs' switching facilities, which is subject to interstate access charges. Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges.”¹¹

Approving Sprint's petition would eliminate the IXC traffic that this paragraph clearly allows.

- Such an arrangement is at odds with existing network routing governed by the LERG. The effect of this inappropriate manipulation and misuse of the LERG is to fool the LERG and LEC local switches into routing interexchange toll calls as local calls.

Carriers such as Sprint already collect terminating charges from their own cellular customers on landline to mobile calls and now, Sprint also wants to collect terminating charges again from LECs.

¹¹ CC Docket Nos. 96-98 and 95-185, First Report and Order released August 8, 1996, paragraph 1043, footnotes omitted, emphasis added.

- Provisioning of the virtual NPA-NXX service as proposed by Sprint would require the LECs to carry (local) calls beyond their exchange boundary without State Commission authority and without agreements with intermediate carriers whose facilities would be used to transport the interexchange (“local”) calls.
- The virtual NPA-NXX service provides an anti-competitive benefit to Sprint, other CMRS carriers and CLECs. They would be able to obtain free calling and actually gain compensation revenue for interexchange landline to wireless calls, while their competitors, the IXC, must still charge toll charges to their customers for similar interexchange calls in order to recover their costs of providing their landline-to-landline service. Additionally, IXC toll providers would further be disadvantaged because they would no longer receive toll revenue for any interexchange virtual NPA-NXX calls. This circumstance would further disincent IXC from serving rural LEC exchanges that have lower toll volumes than urban exchanges.

The Commission should make it clear in this proceeding that differing rating and routing points or virtual NPA-NXX arrangements are inappropriate and constitute an uneconomic bypass of the toll network, are at odds with Commission Orders, are a misuse of the LERG, are anticompetitive and harm local exchange customers. As a consequence, the Commission should prohibit this arrangement.

A decision by the Commission that is consistent with the ILECs’ Comments and adopts this course of action will not harm Sprint, other CMRS providers, CLECs or their customers. They will not suffer any competitive disadvantage and need not, as they allege, direct connect their facilities to the LEC’s switch. They may continue to connect

their facilities to the tandem that serves the ILEC and use common transport on the public switched network to reach customers in ILEC exchanges. They will however, be required, as are all LECs and IXC's to conform to appropriate LERG routing and rating to preserve jurisdictional classifications and the access charge regime.

V

Rejecting Virtual NXX Arrangements Will Not Repeal the Definition of Local

Calling

Commenters supporting the Sprint petition and advocating virtual NXX arrangements (differing rating and routing points) assert that the Commission's definition of local calls would be repealed.¹² In support of this position, the commenters incorrectly claim that:

- The Commission has clearly established that all intra-MTA calls are local, even if subject to intra-LATA toll charges for the end user; CMRS carriers would effectively be denied the ability to provide local numbers in portions of their licensed service territories.¹³
- CMRS carriers correctly assign a number to a customer containing a particular NXX code only if the customer has a community of interest with the rate center to which the code is rated and only to obtain NXX codes in areas where they provide their mobile services.¹⁴
- All CMRS traffic that originates and terminates within the same MTA is local for reciprocal compensation purposes; It does not matter that the LEC is sending or

¹² Allied National Paging Association, page 2.

¹³ Dobson, page ii, 5 and 9.

¹⁴ Voicestream and Western Wireless, pages 4, 5 and 9.

receiving traffic that comes from outside of its landline service area, so long as the call remains in the same MTA, it is local and subject to reciprocal compensation.¹⁵

- Many LECs refuse to deliver intra-MTA land to mobile calls except through an interexchange carrier, thus triggering access charges for the originating carrier, while avoiding any obligation to pay termination compensation to the CMRS carrier; This is at odds with the requirement that originating carriers are required to pay the costs of transporting and terminating their own calls.¹⁶

These comments are misleading and a misrepresentation of the Commission's rules. The Commission's rules and the Act do not require LECs to treat all landline to wireless traffic within an MTA as local. In fact, Commission rules require the opposite. LECs, in conformance with Commission rules, do not originate or exchange telecommunications traffic that is terminated beyond the LECs' local exchange boundary (interexchange calls) with any carrier, including CMRS providers. In the Commission's First Report and Order (CC Docket Nos. 96-98 and 95-185, paragraphs 1034 and 1043), the Commission recognized that, even though local traffic originating and terminating within an MTA is subject to reciprocal compensation, IXCs may originate and carry calls between a LEC network and a CMRS provider's network within the MTA (paragraph 1043). In paragraph 1034, the Commission explained that the originating carrier (in this case the IXC) is responsible for terminating payments or reciprocal compensation for this traffic when the customer pays the originating carrier for its services. As a result of the Commission's and State Commission equal access rules and requirements, and in

¹⁵ NEXTEL, page 2 and 6.

¹⁶ Voicestream and Western Wireless, pages 5 to 7.

conformance with the Commission's First Report and Order, as shown in Attachment 1, interexchange calls originated by customers connected to the LEC's network (interMTA or intraMTA), must be handed off to an IXC. Consequently, IXCs originate, using LEC facilities, all interexchange traffic for their customers that is destined for the CMRS providers using LEC facilities. In other words, it is the IXC that is the provider of the customer's retail service for interexchange calls originated using LEC facilities. Without the IXC, it is not possible for the customer to place interexchange calls that ultimately terminate to CMRS providers. At odds with the CMRS providers' claims that this is LEC local traffic and that the LECs owe reciprocal compensation to CMRS providers, in fact this is interexchange traffic and it is the IXCs that terminate this traffic using CMRS provider facilities. Consequently, the IXC, not the LEC, owe compensation to the CMRS providers for the use of these facilities.¹⁷ This is only logical, because it is the IXC, not the LEC that collects the retail revenue from the customer placing the call and thus has the revenue to pay compensation to the CMRS provider. This is the current industry practice followed by all LECs, large (RBOCs and Sprint's LEC) and small (including the rural ILECs represented by FW&A and KCPR) and it is in conformance with FCC and Commission rules and regulations. These interexchange calls, including intraMTA calls, have never been treated as local, as implied by those supporting Sprint in this proceeding. CFR 47 51.701(b)(2) identifies the traffic that is exchanged between a CMRS provider and a LEC that is subject to reciprocal compensation. That section states in part:

¹⁷ In fact, Sprint PCS has filed a Petition at the Commission seeking to be compensated by AT&T for termination of AT&T customer interexchange calls.

“Telecommunications traffic exchanged between a LEC and a CMRS provider that at the beginning of the call, originates and terminates within the same Major Trading Area”

The interexchange traffic that Sprint and others claim is originated by the LECs is in fact, originated by an IXC and its customer. That customer may reside in the LECs exchange serving area, but the traffic does not originate with the LEC nor is it exchanged with the CMRS provider by the LEC. The ILECs do not and have not delivered interexchange traffic to a CMRS provider. That traffic belongs to the end user's IXC and it is the IXC that delivers their traffic to the CMRS providers, not the LEC.

In conformance with this provision of service, some CMRS providers have negotiated reverse toll billing arrangements with IXC/LEC toll carriers in order to allow landline to wireless calling to appear as local to landline customers calling the cellular mobile customer and in recognition that even within the MTA, IXCs carry interexchange traffic. Under these agreements, the CMRS providers, rather than the originating landline customer, compensate the IXC/LEC toll provider for the toll charges. At odds with the comments of Arch Wireless at page 7, this is “wide area calling” as the Commission's Enforcement Bureau defined it in the Mountain case cited by Arch. As Arch points out, Wide Area Calling (or reverse toll billing) allows a carrier to make an arrangement under which calls that would otherwise be toll will be treated as local, thus allowing a paging (or cellular) carrier to treat the calls as local within an area larger than the typical LEC local calling area. This is precisely the issue raised by the supporters of Sprint in this case. Reverse toll billing arrangements, in some cases, are in the process of being withdrawn. Consequently, in order to recoup what may be lost with the reverse toll

billing arrangements and in a further attempt to avoid appropriate toll billing on all landline to mobile calls, CMRS providers are now arguing that differing rating and routing points (i.e., virtual NXX) are, or should be, authorized by the Act and Commission's rules. However, virtual NXX arrangements or differing rating and routing points are not authorized by Commission rules, nor have the rules ever authorized these inappropriate arrangements.

The various commenters in this docket appear to be asking for various virtual NXX arrangements (only landline to wireless interexchange intraMTA traffic; all wireless interexchange intraMTA and intraMRA traffic; landline to CLEC interexchange traffic) to be authorized by the Commission. The ILECs represented by FW&A and KCPR believe that in all three situations, virtual NXX arrangements or differing rating and routing points are inappropriate and at odds with Commission rules and the Act. The Commission should deny differing rating and routing or virtual NXX arrangements for:

- Interexchange landline to mobile traffic that is interMTA (interstate or intrastate). These calls, under the Commission's rules and the Act are clearly (jurisdictionally) toll and cellular carriers have no basis to obtain toll free calling via differing rating and routing or virtual NXX arrangements.
- Interexchange landline to mobile traffic that is interLATA or interstate intraMTA. Again, these calls, under the Commission's rules and the Act are clearly (jurisdictionally) toll and cellular carriers have no basis to obtain toll free calling via differing rating and routing or virtual NXX arrangements.
- Interexchange landline to mobile traffic that is intraLATA intraMTA. As discussed in previous paragraphs, under Commission rules and the Act, this traffic

must, on an equal access basis, be handed off to an IXC. It is not local, but toll and therefore cellular carriers have no basis to obtain toll free calling via differing rating and routing or virtual NXX arrangements.

- Interexchange interstate or intrastate landline to CLEC traffic. The CLECs can point to nothing in the Commission's rules or the Act that gives them the right to avoid toll charges on IXC interexchange traffic that terminates to their customers. CLECs have no basis to obtain toll free incoming calling to their customers via differing rating and routing points or virtual NXX arrangements.

VI

Differences in Route Miles and Airline Miles Do Not Support Differing Rating and Routing Points or Virtual NXX Arrangements

Commenters supporting Sprint's petition assert that transport (route) and rating (airline) distances have never been identical (i.e. calls are rated based on airline miles rather than based on the actual transport route miles).¹⁸ They try to link this unrelated access and toll billing convention to the virtual NXX arrangement and claim that ILECs are obligated to honor the rating and routing points assigned by neighboring ILECs to their NXXs; and that rating and routing points need not be, and in most cases cannot be, at the same location.¹⁹

The true case is that the use of airline miles rather than route miles to bill for access and toll is simply a billing convention which allows carriers, when required, to route calls in the most efficient manner with the facilities available, even if that is not the most direct

¹⁸ Allied National Paging Association, pages 8 to 13.

route between the originating and terminating points. Consequently, carriers paying access and customers paying toll are not penalized if it is necessary for a carrier to route calls in an indirect manner to take advantage of their own network efficiencies and to account for possible network failures or busy conditions. This billing convention does not change the jurisdiction of a toll call to local nor does it rely on taking numbers from a switch in one geographic area and inappropriately assigning them to a foreign switch. It also does not require that the LERG be incorrectly manipulated to make it appear that calls to those numbers are local and not toll, as does the differing rating and routing point or virtual NXX proposal offered by Sprint. The fact of the matter is that route versus airline mile differences are unrelated to the rating and routing/virtual NXX issue and the Commission should not support adoption of this proposal.

VII

Rural ILECs Have No Obligation To Interconnect At Any Point Specified By A CMRS Provider or CLEC and the CMRS Providers are Not Required to Establish Direct Connections to ILEC Rate Centers

The CLECs and CMRS providers filing Comments in support of Sprint incorrectly assert that unless differing rating and routing points or virtual NXX arrangements are allowed as a means of collecting or aggregating usage, the ability of CMRS carriers to interconnect at any technically feasible point would be repealed.²⁰ It is further asserted that unless the Sprint petition is granted, CMRS carriers and CLECs would be required to

¹⁹ Voicestream and Western Wireless, page 2.

²⁰ Allied National Paging Association, page 2; Triton PCS, exhibit 1.

establish costly and inefficient direct connections to ILEC local calling areas.²¹ To support this invalid conclusion, the commenters purport that:

- CMRS providers have a right to interconnect, not at the point of a ILEC's choosing, but at any technically feasible point.²²
- All ILECs must provide the type of interconnection requested by CMRS carriers and interconnect at any technically feasible point.²³
- CMRS and other carriers are entitled to interconnect at a single point of interconnection within a LATA.²⁴
- The Act allows carriers to interconnect directly or indirectly.²⁵
- AT&T would be forced to deploy switches in every rate center.²⁶

Most of these assertions are nonsense and the others are used in a misleading manner. CMRS carriers and CLECs have the ability to utilize and are utilizing the common public switched network to deliver their calls indirectly to the ILEC local exchange areas for termination (see Attachment 2 for the call processing typically used by CMRS providers for wireless to landline calling). As a consequence, although they may construct or lease direct connect facilities if traffic loads dictate, the CMRS providers or CLECs are not now required to establish direct connections to ILEC local calling areas nor would they be required to do so (nor would they be required to deploy switches in every rate center as AT&T alleges) if and when the Commission denies Sprint's petition to establish differing rating and routing points or virtual NXX arrangements.

²¹ Allied National Paging Association, page 2; Dobson, page i and 3; Voicestream and Western Wireless, pages 2, 5 and 12. .

²² Arch Wireless, page 3; Dobson, page 2 and 3; Voicestream and Western Wireless, page 2.

²³ American Association of Paging Carriers, page 4.

²⁴ NEXTEL, page 4; AT&T, page 2; Triton PCS, page 2.

²⁵ Arch Wireless, page 3; Voicestream and Western Wireless, pages 2 and 7.

With regard to interconnection at the point of the CMRS provider's choosing and a single point of interconnection within the LATA, to which the LEC must deliver traffic, as the comments of John Staurulakis point out²⁷, rural carriers such as the ILECs represented by FW&A are currently exempt from the Act's section 251(c) requirements. Consequently, CMRS interconnection with exempt rural ILECs is governed by the Act, section 251(a). Under section 251(a), the providing carrier (the rural ILEC) can choose the method of interconnection based on its own technical and economic choices.²⁸

VIII

The Commission's Numbering Administration Rules Will Be Violated and Misused If Differing Rating and Routing Points or Virtual NXX Arrangements Are Allowed

Commenters supporting the differing rating and routing point/virtual NXX arrangement wrongly assert that the Commission's numbering administration rules will be violated if the Commission does not approve Sprint's proposal. To support this invalid statement, the Commenters assert that:

- Once the National Code Administrator assigns an NXX code to a CMRS provider, a LEC has no authority to determine if the CMRS provider or any other carrier is using the NXX code properly. CMRS providers can adopt rating points

²⁶ AT&T, page 3.

²⁷ Staurulakis at page 4.

²⁸ Consequently, the requesting carrier (the CMRS provider) must, if it wishes to indirectly deliver traffic for termination to customers connected to the rural ILECs network, (a) Designate a meet point within the rural ILEC's local serving area (the ILEC is not authorized to provide facilities or service outside of this area), (b) Establish a transiting agreement with the intermediate FGC transiting carrier (such as an RBOC or Qwest) and (c) Establish an interconnection agreement with the rural ILEC.

outside of the LEC's service area if the CMRS provider is authorized to provide service in the area for which the numbering resources are being requested.²⁹

- All carriers must load NPA-NXX codes assigned to CMRS and other providers by the North American Numbering Plan Administration into their switches.³⁰

These claims are patently incorrect. The CMRS providers are arguing that they may knowingly misrepresent the facts to the National Code Administrator by not informing the Administrator that the numbers will not be used in the same rating and routing area, but will be used in a foreign area in order to fool the LERG and the assigned switch into treating a toll call as local. Given this misrepresentation, the CMRS carriers are then saying that because they obtained these numbers from the Administrator, the LECs must participate in this misrepresentation and load the numbers into the wrong switch and incorrectly load them into the LERG. The Commission must see through this guise presented by Sprint and the other Commenters and deny the Sprint Petition as a self-serving manipulation of the rules.

IX

Bill-and-Keep Is An Inappropriate Compensation Mechanism For the Exchange of CMRS-ILEC Traffic

Nextel asserts that bill-and-keep is the most competitively neutral compensation methodology for use in the exchange of CMRS-ILEC traffic. Nextel claims that bill-and-keep will benefit both carriers and the public interest because it is economically efficient, substantially reduces accounting and traffic monitoring costs, eliminates the LEC's

²⁹ Triton PCS, pages 6 and 7.

ability to charge CMRS carriers excessive and unreasonable rates for intraMTA traffic, avoids the possibility of differing and contradictory state intercarrier compensation regimes and leads to lower costs for customers.³¹

At odds with Nextel's assertions, bill-and-keep is an inappropriate and inefficient compensation mechanism for CMRS-ILEC traffic that will distort the market to favor competitive entrants while harming LECs and consumers. Bill-and-keep assumes that traffic originated by both parties and terminated to the other party is relatively balanced. This is not the case for most interchanged CMRS-ILEC traffic. In Oklahoma, for example, based on an analysis of traffic originated by IXC's using ILEC facilities and terminated to the CMRS providers versus traffic originated by the CMRS providers and terminated to the ILEC, the CMRS providers terminate approximately 5.25 times as much traffic on ILEC facilities as the IXC's terminate on the CMRS provider facilities (approximately a 85%/15% traffic ratio). Consequently, because of the traffic imbalance, economic efficiency alone dictates that a usage based rate, not bill-and-keep, be established in order to insure that the ILECs are compensated for the facilities used by the CMRS providers to terminate their traffic. Otherwise ILEC local exchange customers will bear the burden of these costs and inappropriately and uneconomically cross-subsidize the CMRS provider services. CMRS providers arguing for bill-and-keep are not interested in economic efficiency, but simply want a free ride to benefit their bottom line at the expense of ILEC landline customers.

Nextel's assertion that substantial savings will occur is wrong as well. The administration and billing costs of compensation are not substantial. The CMRS

³⁰ Voicestream and Western Wireless, page 2 and 3.

³¹ Nextel, pages 8 to 9.

providers and ILECs already have many compensation arrangements in place and functioning, and thus a significant portion of the administration and billing costs already have been incurred. Unless the Commission wants to promote policies that further the inefficient subsidization of wireless providers at the expense of ILECs and their local exchange customers, ILECs must be afforded the opportunity provided under the Act to negotiate appropriate (neither excessive nor unreasonable as asserted by Nextel) rates to recover the costs of facilities used by CMRS providers.

Variances between states are not inappropriate, as implied by Nextel, but appropriately reflect differing local circumstances and the Act allows these state-by-state variances. The Act provides that the State Commissions may arbitrate, if necessary, CMRS-ILEC interconnection agreements, including compensation rate levels. The Commission has established guidelines to be used in these arbitrations in its rules and consequently, it is unlikely that there will be significantly different state-by-state results.

It is unlikely, at odds with Nextel's assertions, that any consumer would experience lower rates if the Commission adopted bill-and-keep. CMRS providers, who already charge their wireless subscribers both to originate and terminate calls at often high flat and usage sensitive rates, are not likely to lower customer rates. Instead, any anticompetitive subsidy from the ILECs resulting from bill-and-keep cost savings would likely be flowed through to the stockholders of the CMRS providers. ILEC customers would be required to inefficiently subsidize the CMRS providers through increased end user rates in order to recover the costs of facilities used by the CMRS providers to terminate its calls.

The arguments presented by Nextel to support bill-and-keep are wrong and are simply a self-serving attempt to increase its bottom line at the expense of ILECs and local exchange customers. Bill-and-keep for CMRS-ILEC interconnection is economically inefficient, results in inappropriate, unwarranted and anticompetitive cross subsidies and should be rejected by the Commission.

X

Conclusion

In this proceeding, CMRS carriers and CLECs are again urging the Commission to implement policies that are at odds with the Act and Commission rules and will provide them with an artificial and inefficient competitive advantage. The Commission, in this proceeding, should begin to implement policies that will in fact be fair to all market participants; policies that will serve consumers well and that will not inefficiently favor CMRS providers and CLECs. For the reasons stated forth by FW&A and KCPR, the Commission should reject the Sprint petition.

Respectfully submitted on behalf of the ILECs by,

Frederic G. Williamson
President, Fred Williamson & Associates, Inc. (FW&A)
2921 East 91st Street, Suite 200
Tulsa, OK. 74137-3355
Telephone: (918) 298-1618

Roger G. Bales
Director of Regulatory & Legislative Affairs

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Kansas Consolidated Professional Resources (KCPR)
2813 SW Westport Plaza Drive, Suite 106-107
Topeka, Kansas 66614
Telephone: (785) 228-9160